

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

FRIENDS OF PINE STREET, d/b/a)	
PINE STREET COALITION,)	
<i>Plaintiff,</i>)	Case No. 5:19-cv-00095-gwc
)	
v.)	
)	
THOMAS D. EVERETT, in his capacity as)	
Executive Director of the Federal Highway)	
Administration; JOE FLYNN, in his capacity)	
as Secretary of the State of Vermont Agency of)	
Transportation; and MIRO WEINBERGER, in)	
his capacity as Mayor of Burlington,)	
<i>Defendants.</i>)	

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
FRCP 65(b);

Plaintiff Pine Street Coalition, by and through its attorney, respectfully moves this Court pursuant to F.R.C.P. 65(b) to issue a temporary restraining order (TRO) halting all construction, including site clearing, related to the Champlain Parkway project.

Defendants have publicly announced that they are moving construction equipment in to the project area today, June 14, 2022, and beginning cutting the trees between Home Avenue and Lakeside Avenue on June 15, 2022 (announcement attached).

Defendants have asserted that they will not voluntarily pause these activities until a decision is reached on Plaintiff's pending Motion for Preliminary Injunction. A TRO is therefore necessary to maintain the status quo and prevent further irreparable harm between now and then.

The "standards which govern consideration of an application for a temporary restraining order . . . are the same standards as those which govern a preliminary injunction." *Local 1814*,

Int'l Longshoremen's Ass'n v. New York Shipping Ass'n, Inc., 965 F.2d 1224, 1228 (2d Cir. 1992). Plaintiff's arguments for meeting this standard are precisely the same as those argued in Plaintiff's pending Motion for Preliminary Injunction.

As explained in that motion and the accompanying declarations, the destruction of numerous acres of forest, a significant portion of which lies in the environmentally critical Englesby Brook corridor, is a classic example of irreparable harm. Put simply, the destruction of this forested green spaces cannot be undone later if Defendants lose on the merits.

As stated in the Declaration of architected and Ecological Design professor Diane Gayer who has done specific field work, research, and teaching regarding the Englesby Brook, "Destruction of the tree community here [at the Parkway crossing location] will cause immediate and long-term harm to the streambank by destroying the root stabilization afforded by 200-year old trees." *Declaration of Diane Gayer, attached to Motion for Preliminary Injunction*, ¶9.

If allowed to proceed, these activities also further commit Defendants to their decision to proceed with the Champlain Parkway as currently envisioned. This undermines the shared purpose of NEPA and this litigation, which is to require Defendants to fully and properly assess the environmental consequences of the project before deciding on a course of action. If Plaintiff prevails on the merits, meaningful reassessment and reconsideration will be greatly impaired if Defendants have already spent millions of dollars erasing five acres of forest. The cost-benefit analysis central to that decision will be distorted because the forest will have already been destroyed and the money already spent. This distortion of the decisionmaking process is another source of irreparable harm Plaintiff seeks to prevent.

Pursuant to Local Rule 7(a)(7), as set out in the Declaration of Plaintiff's counsel, attached, Plaintiff's counsel has attempted to confer with opposing counsel regarding this

motion; the need for a Temporary Restraining Order is urgent and can not wait for time for ordinary consultation or for hearing.

WHEREFORE, for the reasons stated in this Motion, Plaintiff respectfully requests the Court grant their Motion and enjoin Defendants from continuing pre-construction activities, including site clearing and tree removal, or commencing new construction activities pending a hearing and decision on Plaintiff's motion for preliminary injunction.

Dated at Middlebury Vermont this 14th day of June 2022.

The Pine Street Coalition,
By and Through its Legal Counsel,
/s/Cindy Ellen Hill, Esq.
Cindy Ellen Hill, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on 14 June 2022 I filed Plaintiff's Motion for Temporary Restraining and Declarations in support thereof in the U.S. District Court of Vermont ECF filing system and thus have served all parties.

/s/Cindy Ellen Hill, Esq.

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